

REMARKS

Claims 6-19 and 29 are now pending in the application, and claims 1-5, 7, 20-28 and 30 have been cancelled. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

REJECTION UNDER 35 U.S.C. § 103

Claim 7 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over *Howard* (U.S. Pat. No. 6,129,685) in view of *Tillander* (U.S. Pat. No. 3,674,014).

With regard to claim 7, this claim has been cancelled without prejudice.

REJECTION UNDER 35 U.S.C. § 103

Claims 6, 13 and 17-19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Lemelson* (U.S. Pat. No. 6,129,685) in view of *Tillander* (U.S. Pat. No. 3,674,014).

Independent Claim 6

The Applicant submits that claim 6 is not obvious because the cited references do not teach or suggest the required claim features of:

- a catheter having a catheter body having a proximal end and a distal end terminating in a distal tip formed of metallic material that is attracted to a magnet
- a catheter body and sheath body capable of being mechanically pushed to advance the distal tip

The Final Office Action states that *Lemelson* discloses a catheter having a catheter body with a distal end terminating in a distal tip. (Final Office Action, p. 3, ¶ 3). However, *Lemelson* discloses a catheter terminating in an orifice 122 at the distal end, which orifice is required for *Lemelson's* intended purpose of delivering operating mechanisms, such as a nozzle 94 or needle 65. (see col. 14, ll. 19; col. 15, ll. 36-47, and Fig's 11-13). A skilled artisan considering *Lemelson* would not find it obvious to modify *Lemelson's* catheter to include a solid distal tip formed of metallic material, since doing so would render *Lemelson's* catheter unsatisfactory for its intended purpose. MPEP 2143.01 states a proposed modification cannot modify the principle of operation of a reference, and cannot render the prior art unsatisfactory for its intended purpose.

The Final Office Action further takes Official Notice that it is well known in the art to provide a sheath over a catheter. However, the Final Office Action does not provide evidence to support the Official Notice, and never cites a prior art reference recognizing that it is known in the art to provide a sheath over a magnetically-oriented catheter. MPEP 2144 states that "it is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record." (*MPEP 2144.03(a)*, citing *Zurko*, 258 F.3d at 1385; 59 USPQ.2d at 1697...must point to some concrete evidence in the record in support of these findings.) Thus, the Official Notice that it is well known to provide a sheath is insufficient to establish a prima facie case of obviousness.

Moreover, even if the Examiner's Official Notice were combined with *Lemelson*, the Final Office Action still fails to establish a prima facie case of obviousness, because *Lemelson* does not teach a catheter body and sheath body that are capable of being mechanically pushed to advance the distal tip of the catheter, as required in claim 7. Contrary to this required claim element, *Lemelson* teaches that "the catheter can be

adjusted by varying the direction and magnitude of the externally applied magnetic field, thus pulling the catheter." (See *Lemelson*, col. 13, ll. 66, col. 14, ll. 2). Assuming that Lemelson's system worked for its intended purpose of pulling the catheter, there would be no reason to depart from *Lemelson*'s teachings to that claimed, of a catheter body and sheath body that are capable of being mechanically pushed to advance the distal tip of the catheter.

Contrary to *Lemelson*, the present application states that a physician can advance the sheath by pushing on the proximal end (see ¶ [0030]), where the catheter may be disposed within the sheath as shown in Fig's 9-10 (see Fig's 9-10, ¶ [0040]-[0041]), and shows a catheter. Assuming that the Lemelson catheter worked for its intended purpose of pulling the catheter within the patient's body, there would be no reason to depart from Lemelson's teachings, or to modify Lemelson's distal end orifice to a solid distal tip formed of a metallic material that is attracted to a magnet.

Tillander also does not teach or suggest the required claim feature of a catheter body and sheath body that are capable of being mechanically pushed to advance the distal tip of the catheter. Thus, the Applicants submit that neither *Lemelson* or *Tillander* teach a catheter body and sheath body capable of being mechanically pushed to advance the distal tip of the catheter, and that *Lemelson* does not teach a catheter having a distal tip formed of a metallic material (which would render *Lemelson*'s catheter unsatisfactory for its intended purpose of delivering operating mechanisms). These features distinguish claim 7 over *Lemelson* and *Tillander*, and allow the distal tip to be oriented by a magnetic field and advanced by a mechanically pushing the catheter/sheath body. As such, the Applicants submit that claim 6 is not obvious over *Lemelson* and *Tillander* for at least these reasons.

Claims 13 and 17-19

With regard to claims 13 and 17-19, these claims ultimately depend from claim 6, which the Applicants believe to be allowable in view of the above remarks. Thus, the Applicant submits that claims 13 and 17-19 are allowable for at least these reasons.

REJECTION UNDER 35 U.S.C. § 103

Claims 8-12, 14-16, 29 and 30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lemelson (U.S. Pat. No. 5,845,646) in view of *Tillander* and in view of substitution of known equivalents. This rejection is respectfully traversed.

With regard to claims 8-12, 14-16, and 29, these claims ultimately depend from claim 6, which the Applicants believe to be allowable in view of the above remarks. Thus, the Applicant submits that claims 8-12, 14-16 and 29 are allowable for at least these reasons.

The Applicants further submit that the use of radio frequency, laser energy applied to an element, or resistance heating of an element in connection with the claimed distal tip formed of a metallic material attracted to a magnet is not obvious, because in addition to providing delivery of heat to the distal tip, the claimed distal tip (formed of metallic material attracted to a magnet) produces the new result of orienting the tip to thereby position the distal tip relative to the occlusion. Thus, the Applicant submits that claims 8-12, 14-16 and 29 are not obvious and further allowable for at least these reasons.

With regard to claim 30, this claim has been cancelled without prejudice.

CONCLUSION

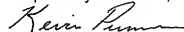
It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (314) 726-7500.

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Respectfully submitted,



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